

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TIMOTHY JOHNSON,

Plaintiff,

v.

CAROLYN W COLVIN, Acting
Commissioner of the Social Security
Administration,¹

Defendant.

CASE NO. 11-cv-05511 JRC

ORDER GRANTING UNOPPOSED
MOTION FOR ATTORNEY'S FEES
PURSUANT TO 42 U.S.C. § 406(b)

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, Dkt. 8; Consent to Proceed Before a United States Magistrate Judge, Dkt. 10). This matter is before the Court on plaintiff's Unopposed Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) (*see* Dkt. 28).

¹ Carolyn W. Colvin became the Acting Commissioner of the Social Security Administration on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin is substituted for Michael J. Astrue as the defendant in this suit.

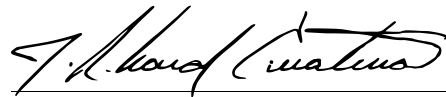
1 The Court may allow a reasonable fee for an attorney who represented a Social Security
2 Title II claimant before the Court and obtained a favorable judgment, as long as such fee is not in
3 excess of 25 percent of the total of past-due benefits. *See* 42 U.S.C. § 406(b)(1); *Grisbrecht v.*
4 *Barnhart*, 535 U.S. 789 (2002). When a contingency agreement applies, the Court will look first
5 to such agreement and will conduct an independent review to assure the reasonableness of the
6 fee requested, taking into consideration the character of the representation and results achieved.
7 *See Grisbrecht, supra*, 535 U.S. at 807, 808 (footnote omitted) (citations omitted). Although the
8 fee agreement is the primary means for determining the fee, the Court will adjust the fee
9 downward if substandard representation was provided, if the attorney caused excessive delay, or
10 if a windfall would result from the requested fee. *See Crawford v. Astrue*, 586 F.3d 1142, 1151
11 (9th Cir. 2009) (citing *Grisbrecht, supra*, 535 U.S. at 808).

12 Here, the representation was standard, at least, and the results achieved excellent (*see*
13 Dkt. 28, Attachments 3, 4). *See Grisbrecht, supra*, 535 U.S. at 808. Defendant stipulated to
14 remand the matter subsequent to plaintiff's filing of his Opening Brief, and following a second
15 hearing and remand by the Appeals Counsel, the Administrative Law Judge awarded benefits to
16 plaintiff (*see* Dkt. 28, Attachment 4). There has not been excessive delay and no windfall will
17 result from the requested fee.

18 Plaintiff's total back payment was \$72,212.00 (*see* Dkt. 28, Attachment 3). Plaintiff has
19 moved for a gross attorney's fee of \$12,052.00, an amount less than 25% of the back payment
20 (*see* Motion, Dkt. 28, p. 1). This Court has previously awarded \$4,631.36 to counsel for EAJA
21 fees (*see* Dkt. 27) and counsel agrees to refund this amount to plaintiff on receipt of the 42
22 U.S.C. § 406(b) fees awarded (*see* Dkt. 28, p. 1). *Parish v. Comm'r. Soc. Sec. Admin.*, 698 F.3d
23 1215, 1221 (9th Cir. 2012).

1 Based on plaintiff's unopposed motion and supporting documents (*see* Dkt. 28,
2 Attachments 2, 3, 4, 5), it is hereby ORDERED that attorney's fees in the amount of \$12,052.00
3 be awarded to plaintiff's attorney pursuant to 42 U.S.C. § 406(b). Following receipt of the
4 406(b) fee, plaintiff's attorney shall refund to plaintiff the previously awarded EAJA fees in the
5 amount of \$4,631.36.

6 Dated this 14th day of November, 2016.

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8 J. Richard Creatura
9 United States Magistrate Judge
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